

**EXHIBIT 38**  
**-**  
**REDACTED VERSION OF**  
**ECF NO. 409-8**

# **EXHIBIT F**

M. Lynch E-mail to  
M. Dell'Angelo dated  
April 4, 2017

## **Marcy Norwood Lynch**

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**From:** Marcy Norwood Lynch  
**Sent:** Tuesday, April 04, 2017 5:31 PM  
**To:** 'Michael Dell'Angelo'  
**Cc:** Nicholas Widnell; Suzanne Jaffe Nero; Matthew Weiler; Kevin Rayhill; Joseph Saveri; Eric Cramer; Patrick Madden; Ben Brown; Richard A. Koffman; Daniel Silverman; Robert C. Maysey; Jerome Elwell (jelwell@warnerangle.com); Don Springmeyer; Stacey Grigsby; Perry Grossman; Colby Williams; Mark R. Suter; Patrick Madden  
**Subject:** RE: Le v. Zuffa -- Meet & Confer

Michael,

We are currently investigating the issues you raise below and will respond to you as soon as we have completed our investigation. In the interim, we are preparing to produce to you the Excel spreadsheets into which the text messages were exported for production, the TIFF versions of which were produced to Plaintiffs in July 2016.

Regards,  
Marcy

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**From:** Michael Dell'Angelo [mailto:mdellangelo@bm.net]  
**Sent:** Tuesday, April 04, 2017 1:20 PM  
**To:** Marcy Norwood Lynch <mlynch@BSFLLP.com>  
**Cc:** Nicholas Widnell <NWidnell@BSFLLP.com>; Suzanne Jaffe Nero <snero@BSFLLP.com>; Matthew Weiler <MWeiler@saverilawfirm.com>; Kevin Rayhill <krayhill@saverilawfirm.com>; Joseph Saveri <jsaveri@saverilawfirm.com>; Eric Cramer <ecramer@bm.net>; Patrick Madden <pmadden@bm.net>; Ben Brown <BBrown@cohenmilstein.com>; Richard A. Koffman <rkoffman@cohenmilstein.com>; Daniel Silverman <DSilverman@cohenmilstein.com>; Robert C. Maysey <rmaysey@warnerangle.com>; Jerome Elwell (jelwell@warnerangle.com) <jelwell@warnerangle.com>; Don Springmeyer <DSpringmeyer@wrslawyers.com>; Stacey Grigsby <SGrigsby@BSFLLP.com>; Perry Grossman <pgrossman@BSFLLP.com>; Colby Williams <jcw@campbellandwilliams.com>; Mark R. Suter <msuter@bm.net>; Patrick Madden <pmadden@bm.net>  
**Subject:** RE: Le v. Zuffa -- Meet & Confer

Marcy:

When may we expect a response to my email of March 29<sup>th</sup>?

As noted below, among other issues, it appears that Zuffa did not produce text messages from Mr. White's "flip phone" corresponding to the telephone number [REDACTED] 9720. Please confirm whether Zuffa collected and produced Mr. White's text messages from [REDACTED] 9720.

Also, upon closer review it also appears that, at most, Zuffa produced only a small number of texts from Mr. White's iPhone corresponding to the number [REDACTED] 3127. However, based on how text messages from the 3127 number were produced, it does not appear that the device or devices on which texts sent from the 3127 number were collected.

For example, we have identified two texts that correspond to Mr. White's 3127 number in the compilations of text messages that appear to have been collected from Mr. White's devices corresponding to two other of his (at least) four telephone numbers. For example:

### Texts from White to himself

11/11/14 text from -3127 to -1092

- Appears at ZFL-1898365 of White compilation (**ZFL-1898330**) and individually at ZFL-1858878

Undated text from -9875 to -3127 and other unknown recipient

- Appears at ZFL-1898226 of White compilation (**ZFL-1898195**) and individually at ZFL-1857784

Additionally, we have identified text messages that correspond to Mr. White's 3127 number in the compilations of text messages that appear to have been collected from other custodians. For example:

Examples of texts to/from White and others

12/12/14 text from White to Shelby

- Appears at ZFL-1897181 of Shelby compilation
- Individual text: ZFL-1894186

5/4/15 texts between White and Silva

- Appear at ZFL-1898096 of Silva compilation
- Individual texts: ZFL-1881262, ZFL-1881264, ZFL-1881265, ZFL-1881267, ZFL-1881268, ZFL-1881269, ZFL-1881270, ZFL-1881271, ZFL-1881272

5/19/15 texts between White and Marcollini

- Appear at ZFL-1898193 of Marcollini compilation
- Individual texts: ZFL-1854793, ZFL-1854794, ZFL-1854795

However, we have not identified a collection of text messages from Mr. White's 3127 number that suggests texts corresponding to that number were collected. Please let us know if the text messages from Mr. White's 3127 number were collected and, if so, where they exist in Zuffa's production.

Regards,

Michael Dell'Angelo

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Michael Dell'Angelo  
**Berger&Montague,P.C.**

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---

**From:** Michael Dell'Angelo

**Sent:** Wednesday, March 29, 2017 5:59 PM

**To:** Marcy Norwood Lynch <[mlynch@BSFLLP.com](mailto:mlynch@BSFLLP.com)>

**Cc:** Nicholas Widnell <[NWidnell@BSFLLP.com](mailto:NWidnell@BSFLLP.com)>; Suzanne Jaffe Nero <[snero@BSFLLP.com](mailto:snero@BSFLLP.com)>; Matthew Weiler <[MWeiler@saverilawfirm.com](mailto:MWeiler@saverilawfirm.com)>; Kevin Rayhill <[krayhill@saverilawfirm.com](mailto:krayhill@saverilawfirm.com)>; Joseph Saveri <[jsaveri@saverilawfirm.com](mailto:jsaveri@saverilawfirm.com)>; Eric Cramer <[ecramer@bm.net](mailto:ecramer@bm.net)>; Patrick Madden <[pmadden@bm.net](mailto:pmadden@bm.net)>; Ben Brown

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**Subject:** RE: Le v. Zuffa -- Meet & Confer

Dear Marcy:

I am writing regarding the production of text messages from Defendant's designated custodians and in further follow-up to the emails sent on March 20, 2017 by Patrick Madden.

Plaintiffs have identified 27 documents containing compilations of text messages in spreadsheet format. *See* Bates range ZFL-1896886-1898640. The manner in which these files have been produced is incomplete and requires prompt correction by Zuffa.

These documents do not appear to have been produced in a manner consistent with the parties' ESI stipulation. *See* September 1, 2015 [Proposed] Stipulated Order re: Discovery of Electronically Stored Information, ECF. No. 160. Defendant appears to have compiled the texts from individual devices into spreadsheets and then produced these documents as TIFF images, yet did not produce the documents in native format. *See id.* at 12. In further contravention of the ESI stipulation, these files appear to have been produced without corresponding metadata fields other than custodian name and confidentiality designation. *See id.* at 12, 14. Additionally, metadata associated with the original text native files has not been produced.

Regardless of whether Zuffa complied with the ESI Stipulation, as noted in prior correspondence, the text message productions were not produced by thread or in date/time order, but rather appear to be sorted alphanumerically. *See* March 20, 2017 email from Patrick Madden to Marcy Norwood Lynch. To make matters worse, many of the text messages lack any date or time information whatsoever. *See, e.g.,* ZFL-1897621-50 (nearly 30 pages of undated text messages to/from Lorenzo Fertitta); ZFL-1898219-31 (nearly 13 pages of undated text messages to/from Dana White).

The failure to populate fields is not limited to date and time. In many cases, the text messages lack information in the "To" or "From" fields. In no less than 11 of the batched spreadsheets, nearly every text message provided contains a blank for either the "To" or "From" field. *See* ZFL-1896908 (Tracey Bleczynski); ZFL-1896918 (Sean Shelby); ZFL-1897428 (Marc Ratner); ZFL-1897604 (Lorenzo Fertitta); ZFL-1897651 (Lawrence Epstein); ZFL-1897833 (Kirk Hendrick); ZFL-1897997 (Joe Silva); ZFL-1898181 (Donna Marcolini); ZFL-1898195 (Dana White); ZFL-1898233 (Dana White); ZFL-1898477 (Craig Borsari). Even if Plaintiffs were to assume that these blank fields are intended to indicate the relevant custodian's phone number, these documents would nevertheless be inadequate. The custodian's phone number is relevant to demonstrate that the custodian sent or received the text messages, and it is highly unlikely that the native texts did not include data on the custodian's phone number. Regardless, such an assumption cannot be universally applicable. For example, in the Shelby text compilation, numerous text messages were sent by or to "Sean Shelby" but lack a sender or recipient. *See, e.g.,* ZFL-1897060 (final text on the page lacking a recipient); ZFL-1897061 (nine of the first twelve texts were sent by or to Shelby to or from an unstated telephone number or email address). Many text entries also lack any content whatsoever in the "Text" field. *See, e.g.,* ZFL-1897064 (January 13, 2014 text message from Cub Swanson to Shelby); ZFL-1897069 (January 15, 2015 text message from George Roop to Shelby); ZFL-1898197 (January 31, 2015 text message from unknown sender to White); ZFL-1898198 (February 6, 2015 text message from unknown sender to White). These missing fields must be filled in for each text in each compilation.

Moreover, in many instances, multiple phone numbers are listed in the “From” field, and as a result, it is impossible to know from whom the messages originated. *See, e.g.*, ZFL-1896909-10 (April 11-12, 2015 text messages from Bleczynski’s custodial files); ZFL-1897611-12 (March 24, 2015 text messages from Fertitta’s custodial files); ZFL-1897651 (June 18, 2015 text message from Epstein’s custodial files); ZFL-1897837-38 (February 5-6, 11, 2015 text messages produced by Hendrick); ZFL-1897997 (January 30, 2015 text messages from Silva’s custodial files); ZFL-1898195 (January 25, 2015 text messages from White’s custodial files); ZFL-1898491-92 (February 24, 2015 text messages from Borsari’s custodial files). The “From” field cannot contain multiple phone numbers because only one person can send a text. Thus, it appears that the fields as populated cannot be correct.

Furthermore, even when certain fields are populated, their content is frequently cut-off and incomplete. For example, many texts cut off the content of the text if the content exceeds the space provided in the field. *See, e.g.*, ZFL-1897088 (January 27, 2015 9:42 am text message from Leslie Smith to Shelby, January 28, 2014 10:12 am text message from Josh Jones to Shelby, January 28, 2015 12:50 pm text message from Joe Benavidez to Shelby). In addition, many text message entries in the compilations cut off the phone numbers if the content exceeds the space available in the fields. *See, e.g.*, ZFL-1897838 (Hendrick’s text entries on February 11, 2015 at 15:49, 15:51, 16:00 and 16:03). Without having the spreadsheets in native format (and assuming that the native format contains the cut-off content), Plaintiffs cannot review the missing content. In addition, due to Defendant’s failure to produce native files for the text message data, numerous text messages contain entries that appear suggest additional information is missing such as a series of May 20, 2015 text messages between Joe Silva and a phone number listed as “5.512E+12.” *See* ZFL-1898111. Please produce full and complete text message data immediately sorted as maintained on the relevant devices in addition to native files for all of the batched spreadsheets.

In addition to those formatting and missing data errors, Plaintiffs’ review of the text messages has raised several questions. First, Plaintiffs have identified three sets of batched text message spreadsheets that reflect the text messages of Dana White (ZFL-1898195, ZFL-1898233, ZFL-1898330) as well as four separate phone numbers used by White (+[REDACTED] 9875, +[REDACTED] 1092, +[REDACTED] 3127, +[REDACTED] 9720). Please confirm which of Dana White’s phone numbers correspond to the above-referenced documents.

Second, Plaintiffs have identified approximately 47 text messages exchanged between Lorenzo Fertitta and White’s +[REDACTED] 9720 number. These text messages range from about 9/14/12 (*see, e.g.*, ZFL-1873545) to 12/3/14 (*see, e.g.*, ZFL-1874221). They were produced from Fertitta’s custodial files, but do not appear to have been produced from White’s custodial files. Please confirm whether these text messages or any other text messages from this number were produced from Dana White’s custodial files and, if not, please explain why these text messages were not produced and produce any responsive text messages from White phone number immediately.

Third, there are numerous examples of text messages that appear in the compilation text message spreadsheets from Fertitta’s custodial files, but do not appear in the White custodial files, and vice-versa. *See, e.g.*, ZFL-1897750 (May 15, 2014 text messages between White and Fertitta that appear only in Fertitta’s spreadsheet); ZFL-1898351 (October 1, 2014 text message from White to Fertitta that appears only in White’s spreadsheet); ZFL-1897698 (December 13, 2014 text messages between White and Fertitta that appear only in Fertitta’s spreadsheet). Many of these text messages were exchanged well after this litigation commenced, during which time both parties were subject to a litigation hold. *See, e.g.*, ZFL-1897660 (January 21, 2015 text messages between White and Fertitta and others that appear only in Fertitta’s spreadsheet); ZFL-1898233-35 (March 19, 2015 text messages between White and Fertitta that appear only in White’s spreadsheet); ZFL-1897616 (June 2, 2015 text messages between White and Fertitta that appear only in Fertitta’s spreadsheet). Please explain why these text messages were not produced by Dana White and Lorenzo Fertitta respectively, and produce any other responsive text messages immediately.

Lastly, many of the text messages appearing in the batched spreadsheets appear to have been sent to or from email addresses. *See, e.g.*, ZFL-1898354 (October 26, 2013 text messages between White and [jsilvamma@gmail.com](mailto:jsilvamma@gmail.com)); ZFL-1896908-09 (March 2015 text messages between Bleczinski and [nbidarian@fertitta.com](mailto:nbidarian@fertitta.com)); ZFL-1897616 (June 2, 2015 text messages between Fertitta and [dfw007@icloud.com](mailto:dfw007@icloud.com)); ZFL-1898117-19 (May 31, 2015 text messages between Silva and [dfw007@icloud.com](mailto:dfw007@icloud.com)). Please confirm that these email addresses were collected and searched and please provide a compilation text file from the custodians' email addresses that received texts.

Regards,

Michael

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**From:** [Michael Dell'Angelo](#)

**Sent:** Saturday, February 4, 2017 12:43 AM

**To:** [Marcy Norwood Lynch](#); [Patrick Madden](#)

**Cc:** [Nicholas Widnell](#); [Suzanne Jaffe Nero](#); [Matthew Weiler](#); [Kevin Rayhill](#); [Joseph Saveri](#); [Eric Cramer](#); [Patrick Madden](#); [Ben Brown](#); [Richard A. Koffman](#); [Daniel Silverman](#); [Robert C. Maysey](#); [Jerome Elwell \(jelwell@warnerangle.com\)](#); [Don Springmeyer](#); [Stacey Grigsby](#); [Perry Grossman](#); [Colby Williams](#)

**Subject:** RE: Le v. Zuffa -- Meet & Confer

Marcy:

Please see the attached.

Regards,

Michael

---

Michael Dell'Angelo  
**Berger&Montague,P.C.**

1622 Locust Street

Philadelphia, PA 19103

direct: [REDACTED]

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**From:** Marcy Norwood Lynch [<mailto:mlynch@BSFLLP.com>]

**Sent:** Friday, January 27, 2017 11:53 PM

**To:** Michael Dell'Angelo <[mdellangelo@bm.net](mailto:mdellangelo@bm.net)>; Patrick Madden <[pmadden@bm.net](mailto:pmadden@bm.net)>

**Cc:** Nicholas Widnell <[NWidnell@BSFLLP.com](mailto:NWidnell@BSFLLP.com)>; Suzanne Jaffe Nero <[snero@BSFLLP.com](mailto:snero@BSFLLP.com)>; Matthew Weiler <[MWeiler@saverilawfirm.com](mailto:MWeiler@saverilawfirm.com)>; Kevin Rayhill <[krayhill@saverilawfirm.com](mailto:krayhill@saverilawfirm.com)>; Joseph Saveri

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<[jcw@campbellandwilliams.com](mailto:jcw@campbellandwilliams.com)>

**Subject:** RE: Le v. Zuffa -- Meet & Confer

Michael,

Please see the attached.

Regards,

Marcy

---

**From:** Michael Dell'Angelo [<mailto:mdellangelo@bm.net>]

**Sent:** Friday, January 20, 2017 3:43 PM

**To:** Marcy Norwood Lynch <[mlynch@BSFLLP.com](mailto:mlynch@BSFLLP.com)>; Patrick Madden <[pmadden@bm.net](mailto:pmadden@bm.net)>

**Cc:** Nicholas Widnell <[NWidnell@BSFLLP.com](mailto:NWidnell@BSFLLP.com)>; Suzanne Jaffe Nero <[snero@BSFLLP.com](mailto:snero@BSFLLP.com)>; Matthew Weiler

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<[jcw@campbellandwilliams.com](mailto:jcw@campbellandwilliams.com)>

**Subject:** RE: Le v. Zuffa -- Meet & Confer

Marcy:

Please see the attached correspondence.

Regards,

Michael

---

Michael Dell'Angelo

**Berger&Montague,P.C.**

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**From:** Marcy Norwood Lynch [<mailto:mlynch@BSFLLP.com>]

**Sent:** Thursday, January 19, 2017 11:47 AM

**To:** Michael Dell'Angelo <[mdellangelo@bm.net](mailto:mdellangelo@bm.net)>; Patrick Madden <[pmadden@bm.net](mailto:pmadden@bm.net)>

**Cc:** Nicholas Widnell <[NWidnell@BSFLLP.com](mailto:NWidnell@BSFLLP.com)>; Suzanne Jaffe Nero <[snero@BSFLLP.com](mailto:snero@BSFLLP.com)>

**Subject:** Le v. Zuffa -- Meet & Confer

Michael and Patrick,




I write to follow up regarding the parties' meet and confer on January 12.

During our call, you raised concerns that Deutsche Bank's ("DB") document production, which was made pursuant to subpoena(s), included documents that were in Zuffa's control but that Zuffa had not produced to Plaintiffs. During the call, we agreed to investigate this issue, but asked that Plaintiffs provide us with specific Bates numbers from the DB production to assist us in our investigation. We would appreciate it if you could provide us with such Bates numbers pending our further analysis of third parties who may have had non-duplicative documents in Zuffa's control. Please note that our analysis is being done in an attempt to resolve these issues without Court intervention, but that Zuffa believes it has fulfilled its production obligations in response to the First RFPs.

Regards,  
Marcy

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Marcy Norwood Lynch, Esq.  
**BOIES, SCHILLER & FLEXNER LLP**  
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Orlando, FL 32801



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